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**IN THE
COURT OF APPEALS OF INDIANA**

RICHARD BROWN,

Appellant-Petitioner,

vs.

KRISTI BROWN,

Appellee-Respondent.

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No. 48A04-0702-CV-91

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0608-DR-981

May 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Richard Brown appeals from the denial of his petition to modify custody. In particular, Richard argues that the trial court erroneously concluded that he failed to establish a substantial change in circumstances necessitating a modification of the child custody agreement in place between Richard and appellee-respondent Kristi Brown regarding their minor daughter, F.B. Finding no error, we affirm the judgment of the trial court.

FACTS

Richard and Kristi were married in 1997, and F.B. was born of the marriage on December 24, 1997. Their marriage was dissolved on March 19, 2003, and the settlement agreement provided that Kristi would have physical custody and the parties would share joint legal custody of F.B.

At some point following the dissolution, Kristi decided to relocate to New Mexico to be nearer to her family. Kristi believed that it would be best for F.B. to finish the school year in Pendleton before relocating, so Kristi and Richard agreed that Richard would have physical custody of F.B. from January 28, 2005, until July 22, 2005, at which time physical custody would be returned to Kristi. The trial court approved the agreement.

On June 6, 2005, prior to the date on which physical custody was to be returned to Kristi, Richard filed a petition to modify custody, arguing that Kristi's new life in New Mexico and F.B.'s adjustment to life with Richard constituted a substantial change in circumstances warranting a custody modification. The trial court held a hearing on Richard's petition on October 18 and 19, 2006.¹ At the hearing, it was established that Kristi relocated

¹ A number of procedural events occurred between the time of the filing of the petition and the hearing thereon that are irrelevant to our disposition herein. Briefly, however, we note that the trial court initially

to New Mexico on January 31, 2005. Initially, she lived with her parents for six weeks until she found her own place to live. She worked at Wal-Mart, where she met her current husband, with whom she has a child who was six weeks old at the time of the modification hearing. Kristi, her husband, and their child are currently living with her husband's parents. They moved into her in-laws' residence because they wanted to care for Kristi's father-in-law, who had been experiencing health problems. Kristi's father-in-law has recovered and, at the time of the hearing, Kristi, her husband, and their child planned to move into their own home.

Richard remarried in April 2005, and he and his wife adopted a child who was four years old at the time of the hearing. F.B. became attached to the child, who she considered to be her sister, and was also attached to other members of her extended family in the area. Richard owns a computer consulting business and his wife is a financial systems coordinator for the National Department of Labor. Their annual household income is approximately \$90,000.

Richard and Kristi are both concerned about F.B.'s education. Kristi points out that during the year and a half in which F.B. had been living with Richard, F.B.'s grades began to decline. Kristi states that she has always helped F.B. with her school work and that, in New Mexico, F.B. would attend the same school that Kristi had attended as a child. Kristi's

granted Richard's petition and subsequently granted Kristi's Trial Rule 60 motion for relief from that judgment, ordering that the status quo remain such that Richard continued to have temporary custody of F.B. pending a hearing on his petition. The trial judge originally assigned to the case then recused himself and appointed a panel for the selection of a special judge. A succession of special judge panels was named and,

mother-in-law is a college graduate, a permanent substitute teacher, and a tutor, and is available to help F.B. if needed. F.B. has a common difficulty with the pronunciation of the letter “r,” and if F.B. needs speech therapy, it is available to her in New Mexico.

Richard, on the other hand, emphasizes that he and his wife are heavily involved in F.B.’s education. Richard was a classroom coordinator and volunteered with different school activities. He maintained consistent contact with F.B.’s teacher and ensured that homework was a priority for F.B.

Kristi’s father-in-law serves as an interim pastor in a New Mexico church. Kristi attends that church and would take F.B. with her if she moved to New Mexico. Richard and his wife were members of a church in Indiana and ensured that F.B. participated in church activities.

F.B. spoke with the trial court following a visit to New Mexico. She said that she had a “great time” with her mom and that she felt more comfortable in New Mexico than in Indiana. Tr. p. 433-34. Numerous witnesses testified that Kristi had a strong bond and loving relationship with F.B. Kristi also testified that Richard is “a good father.” Id. at 191.

On October 27, 2006, the trial court denied Richard’s petition to modify custody, finding that Richard “has not proved by a preponderance of the evidence that there has been a substantial change of circumstances such as to make the prior order of custody unreasonable.” Appellant’s App. p. 73. The trial court awarded custody of F.B. to Kristi,

finally, after an interim special judge took over the case and then recused himself, the Honorable Judge Fredrick Spencer assumed jurisdiction on August 8, 2006.

ordered Richard to pay child support in the amount of \$61 per week, ordered that Richard will have parenting time pursuant to the Parenting Time Guidelines, and ordered Richard to pay a portion of Kristi's attorney fees. Richard now appeals.

DISCUSSION AND DECISION

I. Standard of Review

Richard argues that the trial court erroneously concluded that there has not been a substantial change in circumstances such that a custody modification is warranted. Custody modification decisions are reviewed for an abuse of discretion with a preference for granting latitude and deference to trial judges. Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002). We set aside judgments only when they are clearly erroneous, and will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment. Id. Therefore, on appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal. Id. In reviewing the trial court's judgment, we do not weigh the evidence or judge the credibility of the witnesses and consider only the evidence most favorable to the judgment and the reasonable inferences that may be drawn therefrom. In re Marriage of Richardson, 622 N.E.2d 178, 179 (Ind. 1993).

II. The Statutory Factors

Under Indiana Code section 31-17-2-21, a court may not modify a child custody order unless modification is in the child's best interest and there is a substantial change in one of

several factors that a court may consider in initially determining custody. Kirk, 770 N.E.2d at 307. These factors are:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parent or parents;
 - (B) the child's sibling; and
 - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
 - (A) home;
 - (B) school; and
 - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian

I.C. § 31-17-2-8. In the initial custody determination, both parents are presumed equally entitled to custody, but a petitioner seeking subsequent modification bears the burden of demonstrating that the existing custody arrangement should be altered. Id.

Initially, Richard argues that the trial court erroneously failed to make findings regarding each of the factors included in Indiana Code section 31-17-2-8. Although it is true that the trial court is required to consider each of the factors, nothing in the statute or elsewhere requires the trial court to make findings related thereto. Indeed, it is well established that the trial court need not make specific findings regarding the statutory factors unless such findings are requested. Hegerfield v. Hegerfield, 555 N.E.2d 853, 856 (Ind. Ct. App. 1990). Here, neither party made such a request. We will presume, therefore, that the trial court correctly followed the law. See Lynn v. Windridge Co-Owner's Assoc., Inc., 830

N.E.2d 950, 954-55 (Ind. Ct. App. 2005) (holding that when reviewing a general judgment, the presumption that the trial court correctly followed the law is one of the strongest presumptions applicable to the consideration of an appeal). Keeping in mind our standard of review, which requires that we consider only evidence favorable to the trial court's judgment, we turn to a consideration of each of the statutory factors set forth in Indiana Code section 31-17-2-8.

A. Age and Sex of F.B.

At the time of the hearing, F.B., a girl, was approximately eight years old. This factor does not weigh in favor of or against either of the parties.

B. The Wishes of F.B.'s Parents

Obviously, Richard wishes F.B. to remain in Indiana, whereas Kristi wishes F.B. to relocate to New Mexico.

C. F.B.'s Wishes

F.B. told the trial court that she had a "great" time visiting her mother in New Mexico and that she felt more comfortable in New Mexico than in Indiana. Tr. p. 433-34. That said, it is apparent that F.B. loves both of her parents and her "new" stepfamilies a great deal.

D. Relationships Between F.B., Her Parents, and Her Other Family Members

The record reveals that F.B. and Kristi have a loving relationship and that they have a strong bond. Id. at 270-71, 433-34. Kristi is an attentive mother who is involved in F.B.'s education and schoolwork. She attends church and would ask F.B. to attend church with her

if she moves to New Mexico. Kristi's husband, child, parents, and parents-in-law live in New Mexico and would provide an extended support system for F.B.

It is equally apparent that F.B. enjoys a healthy and loving relationship with Richard, his wife, and his daughter, as well as the other family members who live in Indiana. Although Richard emphasizes the strength of F.B.'s relationship with his wife, we note that we have disapproved of reliance on such evidence in the past:

We . . . disapprove of the court's reliance on evidence regarding the relationship M.B. formed with his step-mother and the care rendered by her during Father's custodial period [T]here is no evidence that the step-mother would make a demonstrably better "parent" than Mother or that M.B. does not have a loving relationship with Mother. The court's explanation for its order improperly elevates a step-parent's importance over that of the natural parent. Our courts should not discourage a custodial parent from allowing a child to spend extra time with the non-custodial parent for fear that any "adjustment" made or "relationship" formed by the child with a third-party during that time might later be deemed a substantial change in circumstances.

Bryant v. Bryant, 693 N.E.2d 976, 979-80 (Ind. Ct. App. 1998).

Furthermore, we note that although Richard emphasizes the comparative financial circumstances of the parties, it is inappropriate to modify a child custody arrangement as a means to effect an improvement in the child's standard of living. Winderlich v. Mace, 616 N.E.2d 1057, 1059 (Ind. Ct. App. 1993). There is no evidence in the record that Kristi and her husband will be financially unable to provide or care for F.B.; consequently, the fact that they earn less income than that of Richard and his wife does not weigh in favor of a modification of custody.

Finally, Richard insists that F.B.'s school in Indiana is superior to the school she would attend in New Mexico. He has not established, however, that she would be deprived of an adequate and appropriate education in New Mexico.

As a petitioner seeking the modification of a custody agreement, it is incumbent upon Richard to establish a substantial change in these factors. He has not provided evidence of a substantial change in the relationships at issue herein such that a modification is warranted.

E. F.B.'s Adjustment to Home, School, and Community

Richard filed the petition to modify custody shortly before F.B. was to return to Kristi's custody and relocate to New Mexico. The trial court ordered preservation of the status quo, meaning that at the time of the hearing on Richard's petition, F.B. had been living with Richard in Indiana for nearly two years. F.B. was well adjusted to all aspects of her life in Indiana and had not yet had time to adjust to life in New Mexico.

Kristi willingly allowed F.B. to remain with Richard temporarily upon Kristi's relocation to New Mexico so that F.B. could finish her school year. It would not be fair to penalize Kristi for her willingness to sacrifice a few months of time with F.B. so that F.B. could finish the school year. In Bryant v. Bryant, the mother was the child's physical custodian and resided with the child in Italy. 693 N.E.2d 976. She allowed the child to live with the father in the United States for the school year, and in reversing the trial court's modification of custody, we "question[ed] the court's reliance on evidence regarding M.B.'s adjustment to life in the United States as proof of a substantial change. The court's conclusion effectively penalizes Mother for having allowed M.B. to live with Father for the

school year.” Id. at 979; see also Fridley v. Fridley, 748 N.E.2d 939, 942 (Ind. Ct. App. 2001) (holding that custodial parent’s relocation, in and of itself, is insufficient to warrant a change of custody). Similarly, we conclude herein that it is improper to conclude that F.B.’s adjustment to her life in Indiana and lack of adjustment to her life in New Mexico is a substantial change in circumstances such that a change in custody is warranted.

F. The Final Three Factors

There is no indication in the record that any of the parties or individuals involved herein have any mental or physical health difficulties that should be taken into account, that there are any problems with domestic violence, or that there has been a de facto custodian involved.

Ultimately, it is apparent that Kristi, Richard, and their respective families all love F.B. a great deal and want what is best for her. In that sense, F.B. is very lucky. Unfortunately, in ruling on this appeal we must necessarily separate her—geographically—from either her father or her mother. We find substantial evidence in the record supporting the trial court’s conclusion that Richard has not established a substantial change in circumstances such that a change of custody is warranted. Richard directs us to evidence supporting his desired outcome, but that is merely a request that we reweigh the evidence and judge the credibility of witnesses—a practice in which we do not engage when reviewing a trial court’s ruling on a petition for modification of custody.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.